

Edwin J. Wilson, Jr. (Bar No. 48881)
Kurt C. Wendlenner (Bar No. 238434)
WENDEL, ROSEN, BLACK & DEAN LLP
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94604-2047 Oakland, CA 94607-4036
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Fax: (510) 834-1928

Attorneys for Defendant
Port of Oakland

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TERRY BROWN,

Plaintiff,

vs.

PORT OF OAKLAND,

Defendant.

Case No. C 08-02358SI

**NOTICE OF MOTION AND MOTION
FOR ADMINISTRATIVE RELIEF
PURSUANT TO CIVIL L.R. 7-11 AND
DECLARATION OF EDWIN J. WILSON,
JR. IN SUPPORT OF MOTION**

Courtroom: 10 – 19th Floor

TO PLAINTIFF TERRY BROWN:

PLEASE TAKE NOTICE THAT Defendant Port of Oakland hereby moves pursuant to
Civil Local Rule 7-11 as follows:

- For an Order Pursuant to Rule 26(a)(1)(A), staying the “Initial Disclosure” requirements of Rule 26(a)(1) pending the Court’s ruling on Defendant’s Motion to Dismiss and Motion for Summary Judgment and pending a further scheduling order by the Court.
- For an Order Pursuant to Rule 26(f)(1), staying the planning conference requirements of Rule 26(f) pending the Court’s further scheduling order and until such time as Defendant’s Motion to Dismiss and Motion for Summary Judgment have been decided.

1 The instant Motion is made on the grounds that:

- 2 • It appears on the face of the complaint, and through the action of the EEOC
3 denying Plaintiff's charge as untimely, that Defendant's pending Motion to
4 Dismiss and Motion for Summary Judgment will be dispositive of all claims in the
5 action.
- 6 • Until there is a ruling on the dispositive motions, and it is determined what claims,
7 if any will remain, it will be difficult, if not impossible, to engage in meaningful
8 case management planning or to determine what witnesses or documents may be
9 necessary to the defense or prosecution of the action.
- 10 • Unless the disclosure and case management requirements are stayed, both parties
11 will be required to unnecessarily expend time and resources and/or to speculate as
12 to what issues should be addressed.

13 DECLARATION OF EDWIN J. WILSON, JR.

14 Pursuant to Local Rule 7-11 Defendant Port of Oakland has met and conferred with
15 plaintiff as follows.

- 16 • On July 8, 2008, Edwin J. Wilson, Jr., contacted Terry Brown, advised him of the
17 requirements of Rule 26. Mr. Wilson requested a stipulation waiving the Initial
18 Disclosure requirements of Rule 26(a)(1) and requesting a stay of the case
19 planning conference required by Rule 26(f). A copy of the proposed stipulation
20 and cover letter are attached as exhibit "A." A copy of Rule 26 was also provided
21 to Mr. Brown.
- 22 • On July 11, 2008, Edwin J. Wilson, Jr. contacted Mr. Brown to determine whether
23 or not he had made a decision concerning the proposed stipulation. Mr. Brown
24 indicated that he needed more time to obtain legal assistance and indicated that he
25 would respond to the request on or before July 16, 2008.
- 26 • On July 16, 2008, Mr. Brown was contacted by Kurt C. Wendlenner, to determine
27 whether or not Mr. Brown had made a decision concerning the proposed
28

1 stipulation. Mr. Brown indicated that he had not. Mr. Wendlenner requested that
2 Mr. Brown contact him by the close of business, July 17, 2008, with his response,
3 one way or the other. Mr. Wendlenner indicated that absent an affirmative
4 response, Defendant would be filing an administrative motion requesting
5 appropriate relief.

- 6 • Mr. Brown did not respond. Under the circumstances, Defendant elected to
7 proceed with the instant motion.

8 I declare under penalty of perjury the forgoing is true and correct. This declaration was
9 executed in Oakland, California.

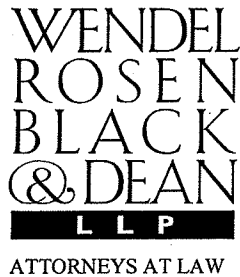
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11 Dated: July 18, 2008

WENDEL, ROSEN, BLACK & DEAN LLP

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13 By: /s/Edwin J. Wilson, Jr.

14 Edwin J. Wilson, Jr.
15 Attorneys for Defendant
16 Port of Oakland
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EXHIBIT A



1111 Broadway, 24th Floor
Oakland, CA 94607-4036

Post Office Box 2047
Oakland, CA 94604-2047

Telephone: (510) 834-6600
ewilson@wendel.com

July 8, 2008

Terry Brown
915 East 21st Street
Oakland, CA 94606

Re: Terry Brown v Port of Oakland
Client-Matter No. 007137-0151

Dear Mr. Brown:

This is to confirm our conversation of this afternoon in which I requested that you stipulate that the requirements of FRCP Rule 26 be stayed pending further order of the Court on August 25, 2008. I have enclosed a proposed stipulation for your review.

I am making this request because the Port has filed a Motion to Dismiss [Rule 12(b)] and a Motion for Summary Judgment [Rule 56] on the grounds that you had failed to exhaust your administrative remedies within the applicable statute of limitations and that the EEOC rejected your charge on the grounds that it was not filed within the statute of limitations [i.e.: "*Your charge was not timely filed with the EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.*"]

I am suggesting that we wait and see what the Court is going to do with the motions. If the motions are granted, the case will be dismissed and there will be no reason to expend the time and money to comply with Rule 26. If the Court denies the motion the Judge will set a new date for compliance with Rule 26 and the parties will know precisely what issues need to be addressed.

Please review the proposed stipulation and if it is acceptable, sign and return it in the enclosed self addressed stamped envelope. In any event, please let me know your response as soon as possible.

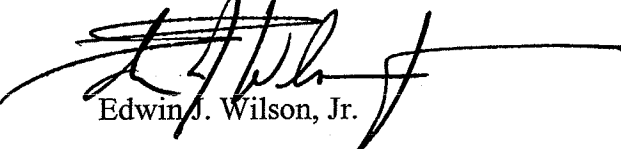
Terry Brown
July 8, 2008
Page 2

WENDEL, ROSEN, BLACK & DEAN LLP

Thank you for your consideration in this matter.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP



Edwin J. Wilson, Jr.

Edwin J. Wilson, Jr. (Bar No. 48881)
Kurt C. Wendlenner (Bar No. 238434)
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Attorneys for Defendant
Port of Oakland

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TERRY BROWN,

Plaintiff,

vs.

PORT OF OAKLAND,

Defendant.

Case No. C 08-02358SI

**STIPULATION TO STAY
REQUIREMENTS OF F.R.C.P. RULE
26(a)(1), AND REQUEST TO STAY
REQUIREMENTS OF RULE 26(f)
PENDING RULING ON DISPOSITIVE
MOTIONS AND FURTHER SCHEDULING
ORDER**

Date: August 22, 2008

Time: 2:00 p.m.

Courtroom: 10 - 19th Floor

Pursuant to Rule 26(a)(1)(A), the parties to the above entitled matter hereby stipulate that the "Initial Disclosure" requirements of Rule 26(a)(1) be stayed pending the Court's ruling on the Port of Oakland's Motion to Dismiss and Motion for Summary Judgment.

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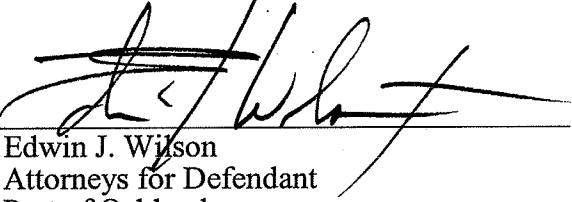
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1 The parties also request that the planning conference requirements of Rule 26(f) be stayed,
2 pursuant to Rule 26(f)(1), pending further scheduling order of the Court.

3
4
5 Dated: July 8, 2008

WENDEL, ROSEN, BLACK & DEAN LLP

6
7 By: 
8 Edwin J. Wilson
9 Attorneys for Defendant
Port of Oakland

10 Dated: July _____, 2008

11
12 By: _____
13 Terry Brown
14 Plaintiff, Pro Se
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PROOF OF SERVICE

I, Louis Agront, declare:

I am a citizen of the United States and am employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1111 Broadway, 24th Floor, Oakland, California 94607-4036. On July 18, 2008, I served a copy of the within document(s):

**NOTICE OF MOTION AND MOTION FOR ADMINISTRATIVE RELIEF
PURSUANT TO CIVIL L.R. 7-11 AND DECLARATION OF EDWIN J. WILSON,
JR. IN SUPPORT OF MOTION**

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. The facsimile machine I used complied with California Rules of the Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of the Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Proof of Service.

☐ at my business address identified above by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, and by placing the envelope, addressed as set forth below, for deposit in the United States Postal Service that same day in the ordinary course of business. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ by placing the document(s) listed above in a sealed UPS envelope with overnight deliver fees paid or provided for, addressed to the person(s) on whom it is to be served, at the address(es) set forth below, and causing the envelope to be delivered that same date to a UPS courier or driver authorized by the express service carrier to receive documents for delivery.

☒ by personally delivering true and correct copies of the document(s) listed above in a sealed envelope, addressed to the person(s) at the address(es) set forth below, by leaving the envelope, which was clearly labeled to identify the attorney(es) being served, with the receptionist or other person apparently in charge at the address(es) set forth below.

☒ See attached service list

☒ I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 18, 2008, at Oakland, California.

/s/ Louis Agront
Louis Agront

Wendel, Rosen, Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4036

Service List

Terry Brown
915 E. 21st Street
Oakland, CA 94606
(510) 967-6872

Plaintiff in Pro Se

Wendel, Rosen, Black & Dean LLP
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